

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

<p>Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities</p> <p>Consumer Protection Initiative, Language Access Issues</p>	<p>Rulemaking 00-02-004</p>
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**ASIAN LAW CAUCUS' COMMENTS ON THE CPUC STAFF'S DRAFT  
REPORT:  
CHALLENGES FACING CONSUMERS WITH LIMITED ENGLISH SKILLS IN  
THE RAPIDLY CHANGING TELECOMMUNICATIONS MARKETPLACE**

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**ASIAN LAW CAUCUS' COMMENTS ON CALIFORNIA PUBLIC UTILITY  
COMMISSION'S DRAFT REPORT: CHALLENGES FACING CONSUMERS  
WITH LIMITED ENGLISH SKILLS IN THE RAPIDLY CHANGING  
TELECOMMUNICATIONS MARKETPLACE**

**INTRODUCTION**

The Asian Law Caucus (“ALC”) respectfully submits the following comments on California Public Utilities Commission’s (“Commission”) Draft Report: Challenges Facing Consumers with Limited English Skills in the Rapidly Changing Telecommunications Marketplace, as encouraged by the Commission. ALC’s comments are summarized as follows: (1) while ALC recognizes that consumer education is important, placing an overwhelming emphasis on consumer education for Limited English Proficiency (“LEP”) consumers will have a limited effect in protecting LEP consumers because it shifts responsibility from telecommunications companies to the consumers; (2) if the Commission insists on placing a great emphasis on consumer education, the Commission must work more closely with and provide resources to Community Based Organizations (“CBO”) to ensure that the consumer education is done correctly; and (3) because consumer education cannot provide LEP consumers with the same protection rule and regulations can provide, the commission needs to create rules and regulations in areas affecting LEP consumers including: requirements for the distribution of in-language information material and bills and strict liability of cellular companies for the actions of its dealers and agents.

**DISCUSSION**

- I. The Commission’s plan for protecting LEP consumers by use of consumer education will have limited results.***

In the Draft Report: Challenges Facing Consumers with Limited English Skills in the Rapidly Changing Telecommunications Marketplace, the Commission places an overwhelming emphasis on consumer education. An overemphasis on consumer education blames LEP consumers for not making an education decision – or simply, for not knowing any better. While consumer education may help LEP consumers be familiar with a limited number of telecom issues, education alone can protect LEP consumers in every aspect of the developing telecom industry. For instance, while educational material is available for wireline and cellular phones, little information is available for newer technologies like voice over internet protocol. Resources to provide consumer education are limited, while issues affecting LEP consumers are vast and ever changing. Consumer education is limited and will not provide a full range of protection to LEP consumers.

***II. If the Commission insists on placing heavy emphasis on consumer education, the consumer education must be done right.***

When developing consumer education protocols, the Commission must ensure that its consumer educational materials meet the specific needs of LEP consumers. Proper resources must be allocated for studying the specific consumer education need of LEP individuals. While many topics are well by covered under the Consumer Protection Initiative (“CPI”), the current in-language educational materials exclude many of the common problems experienced by LEP consumers, including topics like prepaid phone cards. The CPI decision supports education because an education program can be “narrowly tailored to address specific problems encouraged by identifiable groups of

consumers.”<sup>1</sup> While narrowly tailored education material is effective, the Commission must ensure that in-language educational materials are indeed specifically tailored for telecom issue affecting particular groups.

In developing educational materials, the Commission should work more closely with and provide resources to CBOs, who have first hand experience dealing with specific problems and concerns of LEP communities. CBOs are a valuable resource and have a wealth of knowledge regarding LEP consumer problems; in order to tap into this resource, the Commission must develop processes for better CBO involvement. For example, CBO’s involvement in the planning and development of the CPI website was limited because of the demanding 1-3 hour conference calls meetings that occurred several times a week. While CBOs wanted to be involved in the process, the demanding schedule and lack of resources made it impossible for CBOs to participate, essentially shutting CBOs out of the process.

The Draft Report explains that education materials should meet the appropriate comprehension levels (e.g. third grade reading level in the foreign language)<sup>2</sup>. On top of appropriate comprehension levels, the materials must also be culturally competent. Lack of awareness of cultural differences can impede conveying the message effectively. Before the educational materials are mass distributed, the educational materials must be tested in appropriate focus groups to ensure that the correct message and information is being conveyed.

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<sup>1</sup> Draft report Challenges Facing Consumers With Limited English Skills in the Rapidly Changing Telecommunications Marketplace (Aug. 21, 2006), page 26.

<sup>2</sup> Draft report Challenges Facing Consumers With Limited English Skills in the Rapidly Changing Telecommunications Marketplace (Aug. 21, 2006), page 72.

In-language education materials are ineffective unless it reaches its target audience. The Commission must outreach to LEP communities to inform them where to find in-language educational materials. Calphoneinfo.com received 24,606 hits in a little over a month since August 1<sup>3</sup>, but the question that arises is how many of these hits were actually from LEP individuals? Even more, how many of those LEP individuals accessed the in-language part of the website? LEP individuals have limited internet access and internet skills. Using the internet requires a great deal of reading in English. Even if the CPI's web pages are in-language, a LEP person must still navigate through the English website to reach the in-language pages.

Even with internet access and basic skills in searching the internet, finding the Calphoneinfo.com website can be difficult if the exact web address is not known. A Google search of the word phrase "California" "Phone" "information" and the word phrase "Cal" "phone" "info" does not even turn up the Calphoneinfo.com website within 100 hits. While in-language search terms work in Google, a search of the word phrase "California" "dien thoai" "tin tuc" (the Vietnamese translation of "California telephone information" had the same results. The Commission should obtain in-language domain names, which would allow LEP consumers to proceed straight to the in-language website.

Along with the distribution of educational materials, dispute resolution is an important process in consumer education. Dispute resolution helps CBOs, CPUC and telecom companies realize what the common issues and problems arise for LEP consumers. Often times, CBOs are the first line of contact when dealing with telecom

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<sup>3</sup> Draft report Challenges Facing Consumers With Limited English Skills in the Rapidly Changing Telecommunications Marketplace (Aug. 21, 2006), page 30.

complaints.<sup>4</sup> During the dispute resolution, LEP consumers are able to understand the complaint process from beginning to end and gain a trust and understanding of the role of the CPUC. The Communities for Telecom Rights (“CTR”) be able to resolve thousands of consumer complaints in the last three years. Through this process, CTR was able to truly discover and understand the specific issues affecting LEP consumers. The Commission should fund for complaint resolutions by CBOs in the next RFP.

***III. Rules and regulation provide far greater protection to LEP consumers, at a minimal cost to consumers and the telecom industry.***

While the Commission has placed an overwhelming emphasis on consumer education, an equal, if not greater, amount of attention must be placed on LEP consumer protection through rules and regulations. Rules and regulations level the playing field for both the consumers and the telecom companies. Rules and regulations enhance competition, by making all companies adhere to the same code of conduct, regardless of the companies’ size and assets.

Rules and regulations offer protection to the consumers before problems become problems – rules and regulations can be *preventative* measures. Enforcement and litigation can be problematic because it comes on the back end of a problem. Steps are taken only after the damage has been done, or many times, not taken at all.

In dealing with dispute resolution with LEP individuals, ALC has found that most disputes involving LEP consumers are for small amounts, often times \$50.00 and below. While many of these disputes involve the same repeat patterns of abuse, the CPUC only takes significant action when the number of complaints are high. With proper rules and

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<sup>4</sup> Community Technology Policy Council. Access denied: A follow-up report on Information and Communications Technology Equity for Asian Americans and Pacific Islanders (January 2004).

regulations, consumers will not be forced to litigate their problems, the problem can be prevented from the very start, thus saving money, time and consumer headache.

***IV. The following are rules and regulations the Commission should implement to protect LEP consumers:***

- 1. When services are advertised, marketed and sold in-language, the telecom companies should provide in-language materials including, but not limited to key rates, terms, and contracts..***

ALC's pilot study shows that a majority of cellular dealer stores located in Chinese LEP communities offer in-language customer service. LEP consumers who enter these community dealer stores are able to negotiate the price and terms of the service contract solely in-language. Brochures stating key rate and terms of service are usually provided only in English and when it comes time to execute a legal contract, LEP consumers are given contracts written only in English. The LEP consumer relies heavily on the sales person to explain the terms of the contract, leaving the LEP consumer vulnerable to abusive practices and fraud.

ALC requested additional time in order to complete the pilot study that investigates issues surrounding in-language material accessibility to LEP consumers. The Commission denied ALC's request.<sup>5</sup>

Preliminary results of ALC's study show that plenty of English informative material is available, including brochures and contracts, but only a fraction of this material is actually benefiting LEP consumers. During an in-language transaction, sales people attempt to orally translate all the key rates and terms of the contract. Oral translation at the point of sale may not accurately disclose all the provisions of a service

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<sup>5</sup> Draft report Challenges Facing Consumers With Limited English Skills in the Rapidly Changing Telecommunications Marketplace (Aug. 21, 2006), page 66.

contract that an LEP must know before intelligently entering into the contract. Early results of the ALC study show that while explaining contract terms in-language, sales persons neglected to disclose some key rates and contract terms, either negligently or purposely. Among the terms that were not explained in-language were: taxes and surcharges and internet media charges.

The most disturbing term that was not disclosed in-language was retail store's secondary early termination fees. Through ALC's experience with dispute resolution, ALC finds that secondary early termination fees imposed by dealer store located in LEP communities are a standard industry practice. While dealers explain carrier early termination fees, it is not made clear to LEP consumers that a separate early termination fee is imposed by the retail store itself. The problem is compounded because, while sales are in-language, the dealer early termination contracts are in English. LEP consumers are not able to fully understand the English contract and depend on oral representations from retail store employees.

Cellular carriers often allow a "trial period," a time by which the consumer can cancel service without incurring the early termination fee. LEP consumers understand that they are allowed time by the carrier to cancel their service, but since they are not explained that the terms of the dealer early termination fee does not allow for a trial period, ALC receives many complaints from LEP consumers who cancel their service within the carrier's trial period and unexpectedly incur a second early termination fee by the dealer. In essence, dealer early termination fee's allows carriers to officially offer a "trial period," while still locking the customer into cellular contracts from the very first



day of service, without allowing the consumer to ascertain whether the service meets his/her needs by testing the wireless service.

Several clients have come into ALC for help with disputing dealer early termination fees. One Client in particular purchased a wireless plan from a community dealer store in San Francisco. The Client understood that there was an early termination fee imposed by the carrier, but did not understand that there was a separate dealer early termination fee. Because Client was explained that the carrier allowed termination of service within 15 without early termination penalty, Client felt free to test the wireless service by using the phone, in order to ascertain whether the service met her needs. Not being satisfied with the service, Client returned to the dealer store the *very next day* to cancel the service. At this time, Client was made aware of the dealer store early termination fee and the fee was deducted from her credit card.

In-language materials must be provided to LEP consumers so they can make informed choices. LEP consumers cannot depend on sales persons to accurately explain, in-language, all the provisions of the contract. When the terms of an in-language oral representation and the resulting English contract do not coincide, the LEP consumer ultimately loses because the terms within the four corners of the contract usually govern. In-language materials can help LEP consumers avoid fraud and misrepresentations.

***2. When services are advertised, marketed and sold in-language, the company should provide in-language billing.***

Consumers should always be able to understand their bills. When LEP consumers sign up for cellular service at retail stores, they are trusting that the service which was explained to them is ultimately the service they entered into a contract for. When LEP

consumers get bills they cannot understand, they have no way of checking that the service that was explained to them during the purchase is the same service that they are being billed for. If their plan differs, they may not discover it until an English friend or family member helps them read their bill, or until a red flag is raised, usually in the form of a unknown charge for a large amount.

For example, a LEP consumer came into ALC with the following problem. Client was told in-language by a wireless dealer that mobile-to-mobile calls are free. Unknown to Client, mobile-to-mobile calls were not free. Because of the complexity of the bill and because the bill was solely in English, Client paid each bill without understanding what was being charged. Since mobile-to-mobile calls were being billed are regular minutes, every mobile-to-mobile call made was deducted from Client's free roll over minutes. It was not until five months later, when the entirety of Client's free roll over minutes were expended, did Client start being charged for mobile-to-mobile. At this point, the bill skyrocket and a red flag was raised to Client. After five months of service, the cellular carrier questioned why Client did not realize the problem earlier.

In-language billing can help to alleviate any confusion LEP consumers have about the services they are paying for. Especially a problem when advertisements and sale are made in language, the Commission should implement a rule or regulation requiring in-language billing for these situations.

- 3. Since cellular carriers offer their services directly and through an indirect distribution network consisting of agents and dealers, carriers should be strictly liable for the fraud and malfeasance of their agents and dealers.***

In its Draft Comments, the Commission recognizes concerns with unfair and fraudulent practices used by wireless phone and prepaid phone dealers and agents that target vulnerable LEP communities.<sup>6</sup> The LEP community is especially at risk for direct oral misrepresentations or omission of material terms when purchasing wireless service from cellular dealers.

Cellular carriers offer their services through an indirect distribution network consisting of agents and dealers. Wireless dealers are selling products and entering into contracts on behalf of cellular carriers. Under the law of agency, principles are responsible for the malfeasance or unlawful acts of its agents. (Witkin, Summary of California Law, 9<sup>th</sup> Edition, Vol.2, §§41 et seq., §§75 et seq.) An agent is one who represents another in dealings with a third person. (Cal. Civ. Code §2295) While general principles of agency law strongly suggests that cellular carriers are responsible for the malfeasance or unlawful acts of their agents and dealers, because the lack of rules and regulations by the CPUC, it is unclear what level of accountability wireless carriers actually have for their dealers. Instead of bringing litigation with cellular carriers after disputes arise from dealer fraud and misfeasance, cellular carriers, cellular dealers and consumers need a bright line rule to understand who is ultimately responsible.

In Decision 04-09-062, the Commission held Cingular accountable for the unreasonable policies of its dealers, in accordance with the law of agency.<sup>7</sup> While this decision supports the understanding that as principles, cellular carriers are responsible for their agents and dealers, rules and regulations still need to be implemented in order to clarify any confusion or varying interpretations of Decision 04-09-062.

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<sup>6</sup> Draft report Challenges Facing Consumers With Limited English Skills in the Rapidly Changing Telecommunications Marketplace (Aug. 21, 2006), page viii.

<sup>7</sup> Decision 04-09-062, page 81.

The facts in Decision 04-09-062 can arguably be applied differently depending on the specific facts described in the Decision. In the decision, Cingular actually conceded that the law of agency applied to their relationship with their sales agents. The agreement between Cingular and their agents and dealers specifically “provides that the [agent or dealer signing the contract] owes Cingular ‘the fiduciary and other obligations of an agent to its principle’”.<sup>8</sup> Rules and regulations are needed to clarify situations when a principle/agent relationship is not as explicit as was in Cingular’s contracts with their agents and dealers. Also, the dealer stores at issue in Decision 04-09-062 were described as having a consistent image and carrier stores. Cellular carriers should be responsible for all of their agents and dealers, not only the stores that have the same look and feel as a carrier store. Examples of stores typically not having the same look and feel as carrier stores are Best Buy, Circuit City and internet stores like Amazon.com. Decision 04-09-062 can be interpreted various ways, and it is unclear exactly what responsibility carriers have for their agents and dealers, this is why a rule is needed.

In order to protect LEP consumers, carriers must be accountable for the actions of their agents and dealers. Cellular carriers’ attitudes, practices and policies towards their wireless dealers open the door for fraud, misrepresentation and lack of adequate disclosure of information. Dealers are often not reliable business entities. ALC has experience many “fly by night” cellular dealer operations. One particular situation ALC dealt with involved eight LEP consumers and one retail store. The dealer store offered rebates between \$600-\$750, which were redeemable only after 6 months of cellular service. When the LEP consumers returned to the store 6 months later to collect the

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<sup>8</sup> Decision 04-09-062, page 41

rebate, the dealer store informed the LEP consumer that it was the “new” owners and that as new owners, they were not their responsibility to honor the rebate.

Carriers often disavow responsibility for the actions of their wireless dealers and will not acknowledge responsibility for the malfeasance of their dealers. In the previous example regarding the early termination fee with a dealer store, the complaint was brought to carrier’s attention. The carrier acknowledged that the entire transaction was conducted in Chinese, and explained that because Client signed the contract, her signature indicated that she “read, understood, and received a fully detailed explanation of the terms and conditions in that agreement.” (see **Exhibit A**). It seems unreasonable to expect an LEP consumer, to read, understand, or to even know if all the (English) terms of the contract were disclose to them, especially if the sale was conducted orally all in-language. The Carrier stated that if Client felt that her dispute is valid, or if Client felt that there was misrepresentation during the purchase, Client should proceed with arbitration directly with the dealer store. (see **Exhibit A**).

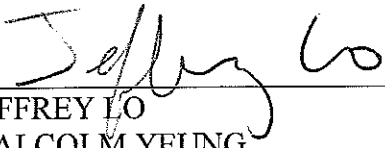
Cellular carriers have good reputations because of their nation wide presence and recognition. LEP consumers instill the same trust in the cellular dealers as they have with the cellular carriers, creating a high level of accountability of the actions of their dealers. Without a bright line rule defining what level of accountability cellular dealers have for their agents and dealers, LEP consumer will continue to be taken advantage of by cellular dealers.

## **SUMMARY OF COMMENTS**

1. Consumer education alone will not protect LEP consumers. Proper resources must be allocated for studying the specific consumer education need of LEP individuals.

2. For consumer education to be successful, the Commission must ensure that the educational materials meet the specific needs of LEP consumers. The Commission should work closely with and provide resources to CBOs in developing educational materials. Educational materials should meet appropriate comprehension levels and be cultural competent. Outreach is necessary to ensure that LEP consumers know where to get the educational materials.
3. The Commission should obtain in-language domain names, which would allow LEP consumers to proceed straight to the in-language portion of their website.
4. Dispute resolution is an important process in consumer education. Funding for CBO's should be included in the CPUC's RFP.
5. In-language materials must be provided to LEP consumers by telecom companies so they can make informed choices. LEP consumers cannot depend on sales persons to accurately disclose, in-language, all the provisions of a contract. In-language materials can help LEP consumers avoid fraud and misrepresentations.
6. In-language billing can help to alleviate any confusion LEP consumers have about the services they are paying for. Especially a problem when advertisements and sale are made in language, the Commission should set up a timeline for the implementation of in-language billing.
7. Because it is unclear what level of accountability wireless carriers have for their agents and dealers, the Commission should develop bright line rules so cellular carriers, cellular dealers and consumers can understand who is ultimately responsible.
8. Without a bright line rule defining what level of accountability cellular dealers have for their agents and dealers, LEP consumer will continue to be taken advantage of by

cellular dealers. There should be strict liability for cellular carriers and their agents and dealers.



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Jeffrey Lo

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From: [REDACTED]  
Sent: [REDACTED]  
To: Jeffrey Lo  
Cc: [REDACTED]  
Subject: [REDACTED] authorized dealer early termination fee

Dear Mr. Lo,

This email is in response to the below correspondence you forwarded to [REDACTED] with our [REDACTED] concerning [REDACTED], specifically the dispute she has with the \$180 charged to her Visa credit card by [REDACTED].

Based on our investigation into this matter, Verizon Wireless has determined that [REDACTED] dispute revolves around the Activation Agreement you forwarded to [REDACTED] via facsimile. If you'll note, this agreement is solely between [REDACTED] and [REDACTED] the designated Authorized User on the Activation Agreement, where she provides her credit card number and expiration date authorizing [REDACTED] to secure an approval for the amount of \$300. Denoted on number 7 of the agreement, [REDACTED] agrees to give this approval for \$300 as a security in the event she canceled or breached the agreement to keep her service active for 181 days.

[REDACTED] Activation Agreement and the related terms and conditions are completely separate from Verizon Wireless' Service Agreement, which allows customers 15 days to cancel the service without an early termination fee. The Activation Agreement explains that in return for selling their equipment at a specific purchase price, [REDACTED] requires Authorized Users who purchase equipment from them to use the service continuously and uninterrupted for 181 days. If [REDACTED] had purchased her equipment from Verizon Wireless, she would have been protected under our Worry Free Guarantee, which gives customers 15 days to ensure they are satisfied with their purchase.

Verizon Wireless contacted [REDACTED] while researching [REDACTED] concerns to get further detail, and they informed us that [REDACTED] was assisted by a Chinese speaking employee, and that the entire transaction was conducted in Chinese and understood by her. Per the Activation Agreement, [REDACTED] indicated with her signature that she read, understood, and received a fully detailed explanation of the terms and conditions in that agreement. Verizon Wireless has contracted with [REDACTED] to sell our service, but that contract does not govern any separate agreement they may have with their customer concerning the sale of their equipment.

If [REDACTED] still feels her complaint and dispute is valid, or that she was misrepresented during the purchase of her equipment, and would like to proceed with arbitration, she should do so against [REDACTED] instead of Verizon Wireless, since the agreement in dispute is with [REDACTED]. Verizon Wireless has complied with the service agreement that was entered into with [REDACTED]. Please feel free to contact me with any questions you may have.

Sincerely,

[REDACTED]

[REDACTED]

**EXHIBIT A**